

# SANDLER, REIFF, YOUNG & LAMB, P.C.

December 21, 2012

Via E-Mail and First Class Mail

Jeff S. Jordan, Esq.  
Supervisory Attorney  
Federal Election Commission  
999 E Street, N.W.  
Washington D.C. 20463

Re: MUR 6668

Dear Mr. Jordan:

We serve as counsel for Shaw Chen and America Shining (as well as Tara Geise in her official capacity as Treasurer), and are writing in response to the Commission's letter dated November 1, 2012 regarding the above reference matter and enclosing a complaint from Bruce John Buettell.

The complaint alleges that America Shining coordinated certain mail communications that advocated the defeat of Ed Royce were coordinated with his opponent, Jay Chen and his campaign committee.

The only facts proffered by the complaint were that Shaw Chen, the brother of Jay Chen, was a contributor to America Shining, and that both America Shining and the Jay Chen campaign used MI, a mail shop service. As explained below, neither fact could lead to a conclusion that communications made by America Shining were coordinated with Jay Chen or his campaign committee.

## BACKGROUND

Jay Chen was a Democratic Party's nominee for the 39<sup>th</sup> Congressional District of California in the 2012 general election. Mr. Chen opposed Republican Ed Royce, an incumbent member of the United States House of Representatives.

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Shaw Chen is the brother of Jay Chen. Mr. Chen did not participate in any way in the campaign of Jay Chen, nor was Mr. Chen privy to any non-public information regarding his brother's campaign. In addition, other than making contributions to America Shining, Mr. Chen did not participate in the creation of any advertisements disseminated by America Shining.

America Shining is an independent expenditure only committee registered with the Federal Election Commission. America Shining's mission is to support Asian-American candidates for office. In addition to Chen election, America Shining made independent expenditures in other federal races during the 2012 election cycle.

MPI, is a printing business. MPI was retained for the sole purpose of printing mailings that were otherwise created by America Shining principals and consultants and did not participate in the creative process of the committee's mailings, nor did they participate in any other aspect of the mailing process, including the decision on whom to send the mailing to or how much funds would be spent on the mailings.

### DISCUSSION

Independent expenditures are defined at 2 U.S.C. § 431(17) and 11 CFR §§ 100.16 and 109.1-.23. In short, an expenditure is independent if there have been no communications about the candidate's projects, plans or needs between the person or committee making the expenditure and the candidate or persons associated with her campaign, nor has the communication been made at the request or suggestion of the candidate or their agents.

Under its regulations, the Commission determines if an expenditure was independent by examining whether the expenditure was coordinated as defined by the Commission's three prong coordination test described in 11 CFR § 109.21. Here, Americas Shining's expenditures clearly do not meet the conduct prong of the coordination test in 11 CFR § 109.21(d)(1)-(6). To meet the conduct prong of coordination definition, the parties must have engaged in one of the following six activities: (1) the communication must have been created, produced or distributed at the request, suggestion, or assent of the candidate or her campaign, (2) the candidate or her campaign must have been involved materially in decisions regarding content, intended audience, means or mode of communication, (3) there must have been a material discussion about the communication between the independent expenditure committee and the candidate or her campaign, (4) the independent expenditure committee and the campaigned shared a common vendor, (5) the independent expenditure committee or its staff or consultants were paid by, directly or indirectly, an independent contractor of the candidate, and (6) the independent expenditure committee distributed campaign material originally produced by the candidate's campaign under circumstances indicating agreement or collaboration with the candidate or her campaign.

Attached is a declaration of Ravi Krishnaney, President of America Shining. Mr. Krishnaney's declaration confirms that; 1) Shaw Chen was a donor to America Shining but did not play any role in the creation or dissemination of mailings undertaken by America Shining; 2) MPI's role in the creation of the mailings were solely as a printer and MPI did not participate in

any decision-making process in connection with the mailings nor convey any non-public information that it may have learned from the Jay Chen campaign in connection with any work it may have performed on its behalf; and 3) all independent communications undertaken by America Shining were done in compliance with the Commission's regulations found at 11 C.F.R. § 109.21.

The Commission has relied on similar declarations or affidavits many times to dismiss coordination allegations at the reason to believe ("RTB") stage. Examples include, MUR 5774 First General Counsel's Report (relying on Gallagher affidavit); MUR 5743 First General Counsel's Report (relying on Cutler affidavit); MUR 5679 First General Counsel's Report (relying on Beaupre affidavit); MUR 6122 First General Counsel's Report (relying on Gallagher affidavit); MUR 6050 First General Counsel's Report (relying on affidavits of Crounse and Hoyt); MUR 6059 First General Counsel's Report (relying on Keating affidavit).

Although the Commission's common vendor regulation indicates that the use of a common vendor may lead to a conclusion that a communication is coordinated with campaign committee (11 C.F.R. § 109.21(d)(4)), it specifically excludes vendors such as printers from the list of vendors from its scope. In promulgating this regulation, the Commission explained that the "defined" types of vendors places those types of vendors "in a position to convey information about the candidate's or party committee's campaign plans, projects, activities or needs to the person paying for the communication where that information is material to the communication. *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421, 436 (January 3, 2003).

In this instance, MPI, as a printer, was not in a position to, nor did it, convey any information it may have learned from the Chen campaign to America Shining. Of course, the complaint in this matter does not even allege that such a conveyance of information took place.

To be sure, FEC enforcement actions that indicate that, as long as the information given to the common vendor is not used or conveyed from the campaign to the independent expenditure, there is no statutory violation. See MUR 5502, Martinez for Senate, General Counsel's Report #2, p. 10, August 22, 2006 ("[Vendors . . . are not in any way prohibited from providing services to both candidates . . . this regulation focuses on the sharing of information about plans, projects, activities or needs of a candidate . . . through a common vendor to the spender who pays for a communication" and *coordination is not presumed 'from the mere presence of a common vendor.'*" citing *Coordinated and Independent Expenditures*, 68 Fed. Reg. 421,436-37 (Jan. 3, 2003) (emphasis added)). See also MUR #5546, Progress for America Voter Fund, 2008; MUR #5576, New Democrat Network, 2006.

With respect to contributions from Shaw Chen, the mere fact that Shaw Chen is Jay Chen's brother, does not implicate any portion of the Commission's coordination regulations. The Commission's dismissal of MUR 6277 is instructive. The complainant alleged coordination between a candidate and his campaign with the candidate's brother who financed an independent expenditure committee to support his brother's campaign. The General Counsel Recommended finding Reason To Believe that a violation had occurred based on (1) the similarity of the language in the advertisements issued by the campaign and the independent expenditure

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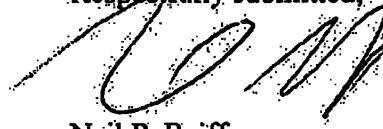
committee, (2) a paid consultant of the independent expenditure committee who had previously been a volunteer for the campaign was either a common vendor, or (3) and an agent for the committee. MUR 6277 Statement of Reasons of Vice Chair Caroline C. Hunter and Commissioners Donald F. McGahn and Matthew S. Peterson, p.4 (January 28, 2011). The complaint also alleged coordination because the candidate and the prime funder and organizer of the independent expenditure committee are brothers and the brother had previously sent a fundraising letter on behalf of the campaign. *Id.* at 5 n.14. Three Commissioners rejected these allegations and voted to dismiss the complaint noting that, "The Commission's coordination regulations do not require heightened scrutiny to situations involving familial ties or other personal relationships." *Id.* The three Commissioners relied on the affidavits submitted by the brothers and others denying coordination. Although the General Counsel was suspicious of the affidavits because they contained general denials, the Commissioners found that the general denials were sufficient because "initiating an investigation on the basis that the affidavits contain general denials as to whether [the participants] had any involvement with the Committee's media strategy or the creation of its public communications would be especially inappropriate, since it would essentially shift the burden of proof to respondents." *Id.* at 10 (footnote omitted).

In this matter, the complaint merely alleges that Shaw Chen is a contributor to America Shining and that he is Jay Chen's brother. The complaint does not even allege that Mr. Chen participated in any way in the creation or dissemination of any America Shining communication. On that basis alone, the complaint must be dismissed with respect to Mr. Chen. Nevertheless, Mr. Chen, in actuality, had minimal input in the creation or dissemination of America Shining communications, and, in addition, he did not convey any non-public information about the plans, projects or needs of Jay Chen's campaign for Congress.

## CONCLUSION

The Commission has stated that it "may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the FECA..." Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith and Scott E. Thomas, MUR 4960, p.1 (December 21, 2000). The complaint does not allege a single fact that could actually result in any violation of the Federal Election Campaign Act or the Commission's regulations. Therefore, the complaint must be dismissed.

Respectfully submitted,



Neil P. Reiff

Counsel for Shaw Chen and America  
Shining, and Tara Geise in her official  
capacity as Treasurer